

Supreme Court of Kentucky

ORDER

**IN RE: COURT RULES FOR PRETRIAL DIVERSION FOR THE
35th JUDICIAL DISTRICT, PIKE COUNTY**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), and upon recommendation of the Judges of District Court, and being otherwise sufficiently advised: the Court Rules for the 35th Judicial District Pretrial Diversion, Pike County, attached hereto, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this 30th day of March, 2009.


CHIEF JUSTICE JOHN D. MINTON, JR.

*****PIKE COUNTY PRETRIAL DIVERSION RULES*****

I. ELIGIBILITY REQUIREMENTS

- a. All persons charged in District Court with the commission of a misdemeanor shall be eligible for participation in the Administrative Office of the Courts Pretrial Services Diversion Program (Program), as an alternative to criminal prosecution subject to the following conditions and exceptions:
 - i. The charge of KRS Chapter 189A shall not be diverted;
 - ii. A felony charge shall not be diverted;
 - iii. The County Attorney and the defendant must consent to participation in the Program. If the County Attorney refuses to consent to a defendant's participation in the program, he or she shall state on the record the reasons therefore;
 - iv. A person who has previously participated in a pretrial diversion program shall not be eligible for participation in the Program; and
 - v. Where reasons of an extraordinary nature are presented which warrant consideration of a person for participation in the Program, notwithstanding his/her lack of eligibility by virtue of one or more of the above set out exclusions, that person may be considered eligible for participation in the Program. The trial judge, county attorney, defendant attorney, and the defendant shall state positions on the record and the judge shall make the final decision.
- b. Nothing in these rules shall be deemed to limit the authority of the County attorney to withdraw criminal prosecution in any given case.

II. PARTICIPATION

- a. Upon the consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge, in his or her discretion believes that:
 - i. There is a substantial risk that the Defendant will abscond from the jurisdiction of the Court prior to fulfillment of the terms of the diversion contract;
 - ii. There is a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract;

- iii. The defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail or a suspended jail sentence; or
 - iv. Participation in the program would unduly depreciate the seriousness of the defendant's alleged crime.
 - v. The trial judge shall state reasons for denial on the record.
- b. Upon approval for participation in the Program, the defendant shall sign a statement waiving his or her right to a speedy trial. Prior to signing such statement the defendant shall be given the opportunity to consult with an attorney if he or she so desires.
 - c. Unless otherwise agreed in writing, participation in the Program shall not constitute an admission or presumption of guilt of the crime charged, shall not be proof of guilt in any subsequent legal action, nor shall a participant be required to give a confession or admission of guilt.
 - d. All Program records and all statements made by a defendant to the pretrial officer regarding the contract shall be privileged; shall not be admissible or discoverable for any purpose; shall be exempt from subpoena; and shall be deemed confidential. However, Program staff, the trial judge, and the chief district judge may access the information for purposes of program review, monitoring, and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the county attorney and the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the Program.
 - e. The fee for participation in this program shall be in the amount as established by the Administrative Office of the Courts. The pretrial officer may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.

III. THE DIVERSION CONTRACT

- a. Referral to Pretrial Services
 - i. Upon referral of the Program, the defendant shall meet with a pretrial officer to establish a formal contract which specifies the court ordered conditions, the referral services to be used, the length of the contract, and if required the need for the defendant to make restitution or perform community service. The contract shall commence upon approval by the trial judge.

- ii. Following completion of the diversion contract, the pretrial officer shall submit a pretrial report and the contract for approval to the trial judge. The report shall contain basic pretrial information, a record of any past offenses and conviction, a record of any prior participation in the diversion program or similar program, employment status, length of residence in the area, and any other information necessary to determine eligibility and appropriateness of approval to participate in the program.
- b. Individual contract lengths shall be determined by the trial judge not to exceed 24 months.
- c. The Program participant shall be required to comply with all provisions of the diversion contract. If the Program participant fails to comply with the conditions of the contract the pretrial officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination. As with the original diversion contract, the participant shall agree to the contract modifications, if any, prior to reinstatement. Upon termination for non-compliance, the county attorney may initiate prosecution of the defendant upon the original charge(s).
- d. A Program participant may terminate the contract at any time by submitting a written statement to the pretrial officer or the trial judge. Where termination is prior to expiration of the contract period, the pretrial officer shall refer the case to the county attorney for resumption of prosecution and the case shall be set for trial.
- e. Upon successful completion of the diversion contract, the charge subject to the contract shall be dismissed, and all official records shall bear the notation "dismissed as diverted". The administrative record shall not be expunged but, rather, shall be retained in conformity with the Kentucky Court of Justice records Retention Schedule.

Have seen and approved:


Chief District Judge


AOC General Counsel